

IOWA DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE ORDER

IN THE MATTER OF: SUN-JON, INC., dba Iowa Poultry; Johnson County, Iowa Permit No. 5200113	ADMINISTRATIVE ORDER NO. 2012-WW- 25
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TO: Melvin Shaw
Registered Agent
Sun-Jon, Inc.
845 Quarry Rd. Ste 130
Coralville, IA 52241

I. SUMMARY

This Administrative Order (order) is issued by the Iowa Department of Natural Resources (DNR) to Sun-Jon, Inc. due to the company's failure to timely apply to renew an Iowa wastewater operation permit. The order assesses an administrative penalty in the amount of \$3,000.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Steve Williams, Environmental Specialist
NPDES Section
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515-281-8884

Mail payment of penalty to:

Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034

Relating to legal requirements:

Jon C. Tack
Attorney for DNR
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319-0034
Ph: 515- 281-8889

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Sun-Jon, Inc.

Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Sun-Jon, Inc. owns and operates a poultry processing facility located at 5195 520th Street SW, Kalona, Iowa 52247. The facility is operated under the name "Iowa Poultry." Pursuant to Iowa wastewater operation permit No. 5200113, Sun-Jon, Inc. is authorized to land apply wastewater from the processing facility on five identified agricultural sites. No discharge to any water of the state is authorized by the permit. Permit No. 5200113 was issued on October 25, 2007 and expired on October 1, 2012. No application for renewal has been received by the DNR.

2. The renewal application for the permit was required to be filed by 180 days prior to expiration of the permit or by April 1, 2012. This was a condition of the expired permit and a requirement under DNR rules. The DNR sent a renewal application form to the permit holder on December 22, 2011.

3. On May 3, 2012, a notice of violation letter was sent for failure to submit the completed renewal application. The DNR has not received a complete permit renewal application to date. This facility also received previous notices of violation on September 2, 2011 and November 2, 2011 due to the failure to submit monitoring reports.

4. On June 4, 2012, Sun-Jon, Inc. submitted the renewal permit fee but did not submit a renewal application.

5. On July 20, 2012, the DNR conducted a site visit to the Sun-Jon, Inc. facility. Facility personnel were reminded of the permit renewal requirement on this date.

6. On September 26, 2012, the DNR sent a letter to Sun-Jon, Inc. which again notified the company that the permit would expire on October 1, 2012 and that the facility would be illegally operating as of that date.

7. As of October 31, 2012, Sun-Jon, Inc. has not submitted an application to renew the wastewater permit.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state without or contrary to a permit from the DNR. Iowa Code section 455B.183 prohibits the construction or operation of disposal systems without or contrary to written

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Sun-Jon, Inc.**

permits from the DNR. Iowa Code section 455B.174 authorizes the Director to issue permits for the operation of a disposal system.

2. Iowa Code section 455B.171(5) defines “disposal system” as “a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge.” The term “includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.” The wastewater processing and land application activities of Sun-Jon, Inc. qualify this facility as a disposal system.

3. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of disposal systems and discharge of pollutants into waters of the state. The Commission has done so at 567 IAC chapters 60–69. Subrule 62.1(1) prohibits the discharge of pollutants to waters of the state unless authorized by a permit from the DNR. Subrule 64.3(1) prohibits the operation of a wastewater disposal system unless authorized by a permit from the DNR and prohibits operation of any wastewater disposal system contrary to any condition of a permit.

4. Department subrule 567 IAC 64.8(1) states that “[a]ny operation or NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit.” The facts stated above demonstrate noncompliance with this provision.

5. The terms of this facility’s permit and the DNR subrule required submission of an application for permit renewal to the DNR no later than April 1, 2012. The DNR has not received a complete permit renewal application for this facility to date.

6. Pursuant to Iowa Code section 17A.18(2), when a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency. Iowa wastewater operation permit No. 5200113 expired on October 1, 2012 and will not be statutorily extended by this provision because a timely application was not received.

V. ORDER

THEREFORE, the DNR orders Sun-Jon, Inc to comply with the following provisions in order to resolve this matter:

1. Sun-Jon, Inc. is required to submit a complete application for renewal of the wastewater operation permit for the Iowa Poultry facility within 30 days of receipt of this order.

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Sun-Jon, Inc.**

2. Sun-Jon, Inc. is prohibited from any land application of wastewater from the Iowa Poultry facility until such time as a renewed Iowa wastewater operation permit has been issued.

3. Sun-Jon, Inc. is hereby assessed and required to pay an administrative penalty of \$3,000 within 30 days of receipt of this order.

VI. PENALTY

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.109 authorizes the Commission to establish a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$3,000.

a. Economic Benefit. Sun-Jon, Inc. has saved money by not allocating time and resources to the submission of the permit renewal application. A penalty in the amount of \$500 is assessed for this factor.

b. Gravity of the Violation. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. Failure to timely submit a renewal application for an Iowa wastewater operation permit and operation of a wastewater disposal system without a permit are serious violations. The amount of \$1,000 is assessed for this factor.

c. Culpability. The DNR sent a renewal application and a notice of violation letter to this facility advising it of its duty to timely submit its renewal application. Despite these efforts, a timely application for permit renewal was not submitted. Failure to submit the renewal application challenges the authority of the DNR and the integrity of the wastewater program. The amount of \$1,500 is assessed for this factor.


VII. APPEAL

Pursuant to Iowa Code section, 455B.175 and 561 IAC 7.5(1), as adopted by reference at 567 IAC 7.1, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of issuance of this Order. The Notice of Appeal should be filed with the Director of the DNR, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Sun-Jon, Inc.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.175. Total compliance with all provisions of Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 31st day of
October, 2012.

Field Office #4; Jon Tack; Iowa Permit #5200113, I.B.(1)